

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

| | | |
|---|---|---------------------------|
| In the Matter of: |) | |
| |) | |
| Request for Review of |) | |
| Of the Decision of the |) | |
| Universal Service Administrator by |) | |
| |) | |
| Glendale School District |) | CC Docket No. 02-6 |
| BEN Number: 125595 |) | |
| |) | |
| Schools and Libraries Universal Service |) | Application Number 582788 |
| Support Mechanism |) | |
| |) | |
| Wireline Competition Bureau |) | |
| |) | |

REQUEST FOR REVIEW AND/OR WAIVER

Pursuant to sections 54.719 and 54.722 of the Commission's rules,¹ the Glendale School District (Glendale or the District) hereby respectfully requests a review of a Universal Service Administrative Company (USAC) decision to rescind E-Rate funds disbursed in Funding Year 2007.

SUMMARY

Glendale received a Form 471 Commitment Adjustment Letter (CAL) on November 6, 2018² from the Schools and Libraries Division of the USAC regarding Federal Communications

¹ 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a)

² See Attachment A.

Commission (FCC) Form 471 Number 582788, Funding Request Number (FRN) 1614763.

Glendale appealed the CAL to USAC following the receipt of the letter. Glendale's appeal was denied as indicated in the USAC's Decision on Appeal Letter received by Glendale on May 10, 2019³. Glendale is assuming that the decision letter is the actual denial letter, however that is not clear as this letter could be considered an incomplete decision by USAC due to the watermark of "DRAFT" that is on each page of the letter received by the District⁴.

Regardless of the status of the letter, whether a draft or final decision, and out of an abundance of caution, Glendale is filing this appeal within the 60 days of receipt of the USAC's DRAFT "Decision on Appeal".

Glendale contends that USAC's attempt to recover funds so long after disbursement violated the District's due process rights and was inconsistent with the Commission's stated goal that investigations and recovery efforts be completed within five years. For these reasons, and because the USAC's recovery efforts are contrary to Wireline Competition Bureau directives issued in 2009, Glendale School District respectfully requests that the Bureau grant its request for review of the USAC's decision.

In the alternative, Glendale requests a waiver of the Commission's rules to the extent necessary to grant the requested relief. It is contrary to public policy and does not advance the goals of the E-Rate program to recover funds more than 10 years after they were disbursed in the absence of waste, fraud, or abuse.

³ See Attachment B.

⁴ *Id.*

BACKGROUND

Glendale School District is a small, rural, school district in Flinton, Cambria County, Pennsylvania and Clearfield County, Pennsylvania, located just north of the Prince Gallitzin State Park. Glendale School District encompasses approximately 60 square miles and serves a little over 760 students with more than 56% of those students living at 185% or below the Federal Poverty Level as shown by their eligibility for the federal free or reduced-price school meal programs in 2018.

On January 2, 2007 Glendale filed FCC Form 470# 792020000614017 which included a request for telecommunications Services of local and long-distance services. On February 7, 2007 Glendale then filed FCC Form 471 Number 582788 which included FRN 1614763 which referenced a contract with Windstream Communications, LLC.

The telecommunication services were delivered by Windstream during the 2007 Funding Year and at which time the FCDL was received, (09/18/2007) and the Form 486 completed and certified, Windstream Communications, LLC filed a Service Provider Invoice (SPI) and received E-Rate funding for these services delivered and paid for by Glendale.

On November 6, 2018 Glendale received a Form 471 Commitment Adjustment Letter seeking recovery of \$9,768.18 in funding from Funding Year 2007. The USAC cited the following as its reasons for seeking recovery:

“Funding Commitment Adjustment Explanation:

Based on the documentation provided during a review, it was determined that this funding commitment must be rescinded in full. Funds were

erroneously committed because USAC determined that the District did not comply with the Pennsylvania Public School Code; Section 508, requiring school board approval for all contracts in the amount of \$100 and above. The District did not get board approval prior to signing a contract with the service provider for the requested amount. As an applicant of the E-rate program, you must be in compliance with all program rules as well as all applicable state and local procurement rules and regulations. As a result, this funding commitment is rescinded in full because you failed to comply with the state procurement code requirement. USAC will seek recovery of any improperly disbursed funds from the applicant”

On January 4, 2019, Glendale filed a timely appeal of the CAL. In its appeal, Glendale noted that documentation retention mandates in 2007 were only five years⁵ and the last date of service for the disputed FRN would have been June 30, 2008. Because the Commitment Adjustment Letter was sent more than 10 years after that date; Glendale was unable to locate any records associated with this request.

USAC denied Glendale’s appeal on May 10, 2019, stating the following as its reasons for denial:

“Funds were erroneously committed because USAC determined that the District did not comply with the Pennsylvania Public School Code; Section 508, requiring school board approval for all contracts in the amount of \$100 and above. The District did not get board approval prior to signing a contract with the service provider for the requested amount. As an applicant of the E-rate program, you must be in compliance with all program rules as well as all applicable state and local procurement rules and regulations.

⁵ See *Fifth Report and Order*, 19 FCC Rcd 15808, 15823-24, (released August 13, 2004). (*Fifth-Report and Order*) para. 47

USAC has determined, that at the time you submitted your Form 471 application, you did not have a contract or legally binding agreement with your service provider(s), which met your state and local, or the FCC's definition of a legally binding agreement. See 47 C.F.R. sec. 54.504(a). Except for services to be delivered under non contracted tariff or month-to-month arrangements, FCC rules require that applicants submit a completed Form 471 "upon entering into a signed contract or other legally binding agreement for eligible services." The existence of a written offer from the service provider containing all of the material terms and conditions and a written acceptance of that offer is considered evidence of the existence of a legally binding agreement. In addition, after a commitment of funding, an applicant's receipt of services consistent with the offer and with the applicants request for E-rate support will also constitute evidence of the sufficient offer and acceptance. See In the Matter of Modernizing the E-rate Program for School and Libraries, WC Docket, No 13-184, Report and Order and Further Notice of Proposed Rulemaking, FC 14-99, para 204 (rel. Jul. 23, 2014). The services you requested are not non-contracted tariff or month-to-month service and you did not demonstrate that there is a contract or a legally binding agreement in place for those services. In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied."

As indicated, USAC denied the appeal; however, the decision did not recognize that Glendale no longer has the documentation on file nor did USAC address Glendale's discussion of the document retention requirements in effect in 2007.

Glendale School District herein timely files its request for review and/or waiver with the Commission⁶ of the recovery of \$9,768.15 of FRN 1614763 in the Schools and Libraries

⁶ 47 C.F.R. § 54.719(b), (c); 47 C.F.R. § 54.722(a)

Division of the USAC CAL, and contends that these funds were disbursed appropriately and within the rules of the E-Rate program. In the alternative Glendale requests a waiver of the Commission's rules to the extent necessary to grant the requested relief.

DISCUSSION AND ARGUMENT

I. DUE PROCESS

Seeking recovery of funds this long after they were disbursed violates Glendale's due process rights. USAC is seeking to recover funding that was committed and disbursed more than 10 years ago. This length of time between funding year and CAL is well beyond the recordkeeping requirements applicable to Funding Year 2007. The Commission established a five-year recordkeeping requirement in 2004, and extended it to ten years in 2014.⁷ Accordingly, there is no justification for expecting Glendale to have retained any documents from Funding Year 2007 for more than five years. By issuing these CAL so long after the funding year in question, specifically 10 years, how can the District be expected to exercise its right of appeal?

The Commission was quite clear in the *Fifth Report and Order* stating "We believe that some limitation on the timeframe for audits or other investigations is desirable in order to provide beneficiaries with certainty and closure in the E-rate applications and funding."⁸

Additionally, the Commission went on to state "Therefore, in this Order, we amend section 54.516 of our rules to require both applicants and service providers to retain all records

⁷ See *Fifth Report and Order*, 19 FCC Rcd 15808, 15823-24 para. 47; *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8974-75 para. 262 (2014) (*First Modernization Order*).

⁸ *Id.*, para. 32.

related to the application for, receipt and delivery of discounted services for a period of five years after the last day of service delivered for a particular Funding Year.”⁹

Since the time for retaining all records related to the application has lapsed for over five years, Glendale does not have any documentation relating to FRN 1614763.

Attached to the CAL received by Glendale was a document entitled: “FAQ (Frequently Asked Questions) for Commitment Adjustment (COMAD)/Recovery of Improperly Disbursed Funds (RIDF)” which indicated:

“What do I do if I no longer have documentation? If you no longer have documentation in support of the funding request, please contact USAC. We will provide copies of documentation that was submitted by the applicant or service provider from our files that is related to the issue identified in the COMAD and/or RIDF. To request documentation, contact the Schools and Libraries staff at SLCompliance@usac.org.”¹⁰

As this was applicable in this instance for Glendale, an email¹¹ was sent requesting any documentation behind the reason of the decision to send the CAL by the USAC for the rescinding of funds. Unfortunately, no documentation was forthcoming from the request, and there was there was nothing left to do, except to file an appeal.¹²

On January 17, 2019, after the CAL was issued, and after an appeal was filed (Jan. 4, 2019), Glendale School District received a “First Demand Payment Letter”.¹³

Within the Demand Payment Letter there is a paragraph which states:

⁹ *Id.*, para. 47.

¹⁰ *See Attachment C.*

¹¹ *See Attachment D.*

¹² *See Attachment E.*

¹³ *See Attachment F.*

“GLENDALE SCHOOL DISTRICT has 15 days from the date of this letter to request a review of the records supporting this Debt.”

On January 30, 2019, Glendale filed a customer service record (#263546)¹⁴ which was within the 15 days – as directed in the letter – requesting the review of the records supporting the debt associated with the Demand Payment Letter (ultimately the information contained in the CAL for FRN 1614763). Again, *no documentation was forthcoming*, thus Glendale has verified through multiple resources that USAC does not have any documentation regarding the CAL and proof that this rescinding of funds is legitimate, seems to be unsupported by USAC.

Since the SLC Compliance staff and USAC customer service staff cannot find any documentation that a competitive violation existed, Glendale finds it difficult to process or comprehend why the CAL was sent in the first place. This letter to rescind funding now places the burden of proving a negative on the School District long after the record retention deadline related to the application for receipt and delivery of services has passed.

Further complicating matters, many of the school personnel have changed and left the district, and there is no one within the Glendale staff that was involved in the alleged E-Rate contract/bidding violations in the CAL. Therefore, finding anyone to even speak with, let alone locate any documentation for the district to be able to defend against the alleged competitive bidding violations, has become impossible – nor is it required by regulations. By default, Glendale should not have the burden of proof in this instance, as the onus of providing documentation to all allow any rescinding of funds rests with the USAC.

¹⁴ See Attachment G.

Any relevant documentation in the District's possession is long gone, as are the Glendale personnel who handled E-rate in Funding Year 2007. USAC's unexplained delay in seeking recovery of these funds thus violates Glendale's due process rights.

II. TIME-BARRED

Glendale School District has observed that over the past two years, the Commission has declined to recognize any formal temporal limitation on recovery actions by USAC. In the *Net56 Order*, the Commission determined that the five-year investigation period it had previously established in the *Fifth Report and Order* is a "policy preference" and "not an absolute bar recovery."¹⁵

In the *Net56 Order* the Commission stated that the USAC had concluded its inquiry within five years of the funding disbursement and the resulting action fell within a reasonable time thereafter.¹⁶

Unlike the *Net56 Order* where an investigation was initiated within five years of the last date to receive services, there was absolutely no audit or investigation directed at Glendale prior to the Commitment Adjustment letter. The *Fifth Report and Order* is clear on that point stating: "Under the policy we adopt today, USAC and the Commission shall carry out any audit or investigation that may lead to discovery of any violation of the statute or a rule within five years of the final delivery of service for a specific funding year."¹⁷

¹⁵ See *Application for Review of a Decision of the Wireline Competition Bureau by Net56, Inc., Palatine, Illinois*, CC Docket No. 02-6, Memorandum Opinion and Order, 32 FCC Rcd 963, 966 para 9 (2017) (*Net56 Order*)

¹⁶ *Id.*, para. 9.

¹⁷ See *Fifth Report and Order* para. 32.

More recently, in its *Blanca Order*, the Commission rejected an argument that the Supreme Court's decision in *Kokesh v. SEC* imposed the general federal five-year statute of limitations in 28 U.S.C. § 2462 on USAC recovery actions.¹⁸

But even taking these Commission orders into account, USAC must still respect the Commission's unequivocal preference for concluding investigations within five years. Understanding for the Commission's policy preference is particularly important where, as is the case here, the facts can be distinguished from the *Blanca Order*.

In *Blanca*, the Commission determined that the federal five-year statute of limitations provision was not applicable to Blanca because the recovery at issue was not a penalty but "merely recovers for the USF a windfall to which Blanca was not entitled."¹⁹ In this case, USAC's recovery effort can only be characterized as a penalty. Unlike Blanca, Glendale did not receive a "windfall": USAC disbursed funds that paid for E-Rate eligible services that the District used to provide educational opportunities for its students, all in furtherance of the E-Rate program's statutory goals, and the District paid its share for the services purchased.

And again, the commission reiterates this further in *Fifth Report and Order*: "For consistency, our policy for audits and other investigations mirrors the time that beneficiaries are required to retain documents pursuant to the rule adopted in this order. We believe that conducting inquiries within five years strikes an appropriate balance between preserving the

¹⁸ See *Blanca Telephone Company Seeking Relief from the June 22, 2016 Letter Issued by the Office of the Managing Director Demanding Repayment of a Universal Service Fund Debt Pursuant to the Debt Collection Improvement Act*, CC Docket No. 96-45, Memorandum Opinion and Order and Order on Reconsideration, 32 FCC Rcd 10594, 10611-12 paras. 44-45 (2017) (*Blanca Order*)

¹⁹ *Id.*, para. 45

Commission’s fiduciary duty to protect the fund against waste, fraud and abuse and the beneficiaries’ need for certainty and closure in their E-rate application processes.”²⁰

USAC violated clear Commission regulation when issuing a Commitment Adjustment to Glendale by failing to contact the District regarding an audit or investigation within five years of the last date to receive services.

Glendale could not find any requests from the USAC prior to 2018, to provide copies of the school board approval of the contract. This loss of evidence is why Congress establishes statutes of limitations.

As the Supreme Court has explained, “[s]tatutes of limitations are intended to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.”²¹ That is exactly what has happened here: certain witnesses have disappeared, others do not have clear memories of events that occurred over a decade ago, and the District – nor USAC, can verify that it has any documents.

The funding commitment adjustment sought by USAC is a penalty under the statute of limitations. A penalty addresses a wrong against the public, not an individual, and is sought for the purpose of punishment and deterrence, not just compensation of a victim.²² Rescission of E-rate funding meets this definition, because there is no individual that is a victim. USAC seeks the return of funding to address a “wrong” against the E-Rate program and to recoup money for the

²⁰ *Id.*, para 33.

²¹ See *Gabelli v. SEC*, 568 U.S. 442, 449 (2013) (quoted authority omitted)

²² See *Kokesh v. SEC*, 581 U.S. ___, 137 S. Ct. 1635, 1642 (2017).

Universal Service Fund on behalf of the federal government. The commitment adjustment thus constitutes a penalty for purposes of the Section 2462 statute of limitations.

The only purpose for recovery here would be to punish the School District and deter future violations by E-rate participants, which means that the statutory limitation should apply.

Alternatively, the funding adjustment sought by USAC could also be considered a forfeiture under the statute of limitations. The common meaning of “forfeiture” is the requirement that a person turn over money or property because of a breach of a legal duty.²³ Rescinding of E-rate funding meets this definition, because USAC would require Glendale to turn over its money because it purportedly did not comply with the contract approval process established by federal and state laws.²⁴ The commitment adjustment thus constitutes a forfeiture for purposes of the Section 2462 statute of limitations.

If USAC’s actions do not violate the letter of the Commission’s orders regarding the timely completion of investigations and recovery actions, they certainly violate the spirit. Glendale asks that the FCC reverse USAC’s decision.

WAIVER REQUEST

In the alternative, a waiver of the Commission’s rules is in the public interest. Glendale respectfully requests that the Bureau waive the Commission’s rules to the extent necessary to grant the requested relief. The only records Glendale has is the CAL letter stating the reason for the rescinding of funds, not once in 11 years did USAC indicate that there was an issue with the

²³ See *SEC v. Graham*, 823 F.3d 1357, 1363 (11th Cir. 2016)

²⁴ The Communications Act actually treats the terms “penalty” and “forfeiture” synonymously. See *Worldwide Indus. Enters.*, 220 F. Supp. 3d at 337-38 (referring to a “forfeiture penalty”).

funding of FRN 1614763. It is inconsistent with the public interest to force an applicant to try to defend itself against allegations of rule violations under these circumstances.

Any of the Commission's rules may be waived if good cause is shown.²⁵ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁶ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁷

Attempting to recover funds from 2007-2008, based on missing documentation that the District was not required to retain beyond the original five years, harms the District and its individual students. Waiving the rules in this situation will better serve the purpose of the E-rate program to insure that [e]lementary and secondary schools and classrooms . . . and libraries should have access to advanced telecommunications services.”²⁸

CONCLUSION

The final delivery of service for FRN 1614763 was June 30, 2008. The CAL sent to Glendale, is dated November 6, 2018 - this is more than ten years after the date last date of service and more than five years after the document retention deadline has passed. Glendale and USAC have demonstrated more than once, that they have no records regarding this FRN.

²⁵ 47 C.F.R. § 1.3.

²⁶ See *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁷ *Id.*; See Also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

²⁸ 47 U.S.C. § 254(h).

The lack of documented proof of the alleged bidding violation makes it clear, by default, that the CAL and the subsequent USAC decision to deny Glendale's appeal has no basis and therefore, cannot be enforced.

There is no waste, fraud, or abuse in this situation and there is no harm to the E-Rate program in the event of a waiver being issued to Glendale.

For the foregoing reasons, Glendale urges the FCC to grant this request for review or in the alternative waive the Commission's rules to the extent necessary to grant the relief requested.

Respectfully submitted
on behalf of Glendale School District

/s/ Rosemary Enos
Rosemary Enos
Epic Communications
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Solon, OH 44139
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July 9, 2019

ATTACHMENT A

Edward DiSabato
GLENDALE SCHOOL DISTRICT
1466 BEAVER VALLEY RD
FLINTON, PA 16640 - 8900



Commitment Adjustment Letter

Edward DiSabato
GLENDALE SCHOOL DISTRICT
1466 BEAVER VALLEY RD
FLINTON, PA 16640 - 8900

11/6/2018

Our review of your Schools and Libraries Universal Service Support Program (or E-rate) funding request has determined funds were committed in violation of Federal Communications Commission (FCC) rules. You have 60 days from the date of this letter to appeal the following decision(s). For more detailed information see below.

Total commitment adjustment: \$9,768.15

Total amount to be recovered: \$9,768.15

| <i>FCC Form 471</i> | <i>FRN</i> | <i>Commitment adjustment</i> | <i>Total amount to be recovered</i> | <i>Explanation(s)</i> | <i>Party to recover from</i> |
|---------------------|------------|------------------------------|-------------------------------------|-------------------------|------------------------------|
| 582788 | 1614763 | \$9,768.15 | \$9,768.15 | Comp. Bidding Violation | Applicant |

See Attached Adjustment Report for more information on the specific FRNs and Explanations listed above.

Commitment Adjustment

FCC rules require the Universal Service Administrative Company (USAC) to rescind commitments and recover funding when it is determined that funding was committed and disbursed in violation of the rules. This letter notifies you that USAC will be adjusting your funding commitment(s) and provides information on how to appeal this decision.

This is NOT a bill. If disbursed funds need to be recovered, USAC will issue a Demand Payment Letter. The debt referenced in the Demand Payment Letter will be due within 30 days of that letter's date. Failure to pay the debt may result in interest, late payment fees, and administrative charges and will invoke the FCC's "Red Light Rule."

FCC's Red Light Rule

The FCC Red Light Rule requires USAC to dismiss pending FCC Form 471 applications, appeals, and invoices or to net disbursements offsetting the debt if the entity responsible for paying the outstanding debt owed to the FCC has not paid the debt or made satisfactory arrangements to pay the debt within 30 days of the Demand Payment Letter. For information on the Red Light Rule, see

<https://www.fcc.gov/licensing-databases/fees/debt-collection-improvement-act-implementation>

To Appeal This Decision

If you wish to contest any part of this letter, you must first file an appeal with USAC to seek review of the decision. Parties that have filed an appeal with USAC and received an adverse decision may, if they choose, appeal USAC's decision to the FCC. Parties seeking a waiver of a codified FCC rule should file a request for waiver directly with the FCC because USAC cannot waive FCC rules. Your appeal to USAC or waiver request to the FCC must be filed within 60 days of the date of this letter.

All appeals filed with USAC must be filed in EPC by selecting "Appeal" from the menu in the top right hand corner of your landing page and providing the requested information.

Your appeal should include the following information. (Because you file the appeal through your EPC account, the system will automatically fill in some of these components for you).

- 1) Name, address, telephone number, and email address for the contact person for this appeal.
- 2) Indicate specifically that your letter is an appeal. Include the following to identify the USAC decision letter (e.g., Commitment Adjustment Letter) and the decision you are appealing:
 - a. Appellant name;
 - b. Applicant name and service provider name, if different from appellant;
 - c. Applicant BEN and Service Provider Identification Number (SPIN);
 - d. FCC Form 471 Application Number and the Funding Request Number (FRN) or Numbers as assigned by USAC;
 - e. "Commitment Adjustment Letter," AND the exact text or the decision that you are appealing.



3) Identify the problem and the reason for the appeal and explain precisely the relief sought. Please keep your appeal to the point, and provide supporting documentation. Be sure to keep a copy of your entire appeal, including any correspondence and documentation. A copy will automatically be saved for you in EPC. USAC will reply to your appeal submission to confirm receipt.

For more information on submitting an appeal to USAC including step by step instructions on how to file the appeal through EPC, please see "Appeals" in the Schools and Libraries section of the USAC website.

As mentioned, parties seeking a waiver of FCC rules or that have filed an appeal with USAC and received a decision may file a request for waiver or appeal USAC's decision to the FCC. Waiver requests or appeals to the FCC must be made within 60 days of the issuance of USAC's decision and include all of the information referenced above for appeals to USAC.

The FCC recommends filing appeals or waiver requests with the Electronic Comment Filing System (ECFS) to ensure timely filing. Electronic waiver requests or appeals will be considered filed on a business day if they are received at any time before 11:59 PM ET. If you have questions or comments about using the ECFS, please contact the FCC directly at (202) 418-0193.

For more information about submitting waiver requests or appeals to the FCC, including options to submit the waiver request or appeal via U.S. mail or hand delivery, visit the FCC's website.

Schools and Libraries Division

cc: Amy Barnes

Windstream Communications, LLC

Adjustment Report

FCC Form 471 Application Number: 582788
Funding Request Number: 1614763
Commitment Adjustment: \$9,768.15
Total Amount to Be Recovered: \$9,768.15
Explanation(s): Comp. Bidding Violation

Party to Recover From: Applicant
Funding Year: 2007
Billed Entity Number: 125595
Services Ordered: TELCOMM SERVICES
Service Provider Name: Windstream Communications, LLC
SPIN: 143030766
Original Funding Commitment: \$9,768.15
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$9,768.15

Funding Commitment Adjustment Explanation

Based on the documentation provided during a review, it was determined that this funding commitment must be rescinded in full. Funds were erroneously committed because USAC determined that the District did not comply with the Pennsylvania Public School Code; Section 508, requiring school board approval for all contracts in the amount of \$100 and above. The District did not get board approval prior to signing a contract with the service provider for the requested amount. As an applicant of the E-rate program, you must be in compliance with all program rules as well as all applicable state and local procurement rules and regulations. As a result this funding commitment is rescinded in full because you failed to comply with the state procurement code requirement. USAC will seek recovery of any improperly disbursed funds from the applicant.

ATTACHMENT B



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2007-2008

5/10/19

Dennis Bruno
Glendale School District
1466 Beaver Valley Rd
Flinton, PA 16640-8900

Re: Applicant Name: GLENDALE SCHOOL DISTRICT
Billed Entity Number: 125595
Form 471 Application Number: 582788
Funding Request Number(s): 1614763
Your Correspondence Dated: January 04, 2019

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2007 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision. If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1614763
Decision on Appeal: **Denied**
Explanation:

- Funds were erroneously committed because USAC determined that the District did not comply with the Pennsylvania Public School Code; Section 508, requiring school board approval for all contracts in the amount of \$100 and above. The District did not get board approval prior to signing a contract with the service provider for the requested amount. As an applicant of the E-rate program, you must be in compliance with all program rules as well as all applicable state and local procurement rules and regulations.

USAC has determined, that at the time you submitted your FCC Form 471 application, you did not have a contract or a legally binding agreement with your service provider(s), which met your state and local or the FCC's definition of a contract or a legally binding agreement. See 47 C.F.R. sec. 54.504(a). Except for services to be delivered under non-contracted tariff or month-to-month arrangements, FCC rules require that applicants

submit a completed FCC Form 471 "upon entering into a signed contract or other legally binding agreement for eligible services." The existence of a written offer from the service provider containing all the material terms and conditions and a written acceptance of that offer is considered evidence of the existence of a legally binding agreement. In addition, after a commitment of funding, an applicant's receipt of services consistent with the offer and with the applicant's request for E-rate support will also constitute evidence of the existence of a sufficient offer and acceptance. See In the Matter of Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 para. 204 (rel. Jul. 23, 2014). The services you requested are not non-contracted tariff or month-to-month services and you did not demonstrate that there is a contract or a legally binding agreement in place for those services. In your appeal, you did not demonstrate that USAC's decision was incorrect. As USAC does not have authority to waive the FCC rules of the program, your appeal is denied.

Since your appeal was denied in full, dismissed or cancelled, you may file an appeal with the FCC. Your appeal must be postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found under the Reference Area/"Appeals" of the SLD section of the USAC website or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

ATTACHMENT C



Commitment Adjustment (COMAD)/ Recovery of Improperly Disbursed Funds (RIDF)

Why am I receiving a letter for recovery of funds on an old funding year?

USAC is obligated by federal law to rescind commitments and recover improperly disbursed funding. There is no time limit on such actions.

As an example, USAC placed a number of recoveries on hold based on its interpretation of the timeline for recoveries identified in the Fifth Report and Order issued in 2004 by the Federal Communications Commissions (FCC). On January 17, 2017 the FCC issued a decision on an appeal filed by service provider, Net 56 Inc. The FCC explained in this decision that there is no time limit for recovering E-rate funding that was committed and/or disbursed in violation of FCC rules. Additionally, that decision stated that the five-year document retention period, in place at the time, was only an administrative policy and does not negate USAC's obligation to protect the E-rate program from waste, fraud, and abuse.

How does USAC identify a COMAD or RIDF?

COMAD or RIDF letters are issued when program rule violations are discovered during audits, Payment Quality Assurance (PQA) reviews, invoice reviews, appeal reviews, and other investigations or post-commitment reviews.

What is the reason for the Commitment Adjustment (COMAD) or Recovery of Improperly Disbursed Funds (RIDF) letter?

The letter provides an explanation of the rule violation, the amount of recovery being sought, and from whom the recovery is being sought. You have 60 days to appeal the decision contained in this letter before USAC begins recovery actions by issuing a Demand for Payment Letter.

What do I do if I no longer have documentation?

If you no longer have documentation in support of the funding request, please contact USAC. We will provide copies of documentation that was submitted by the applicant or service provider from our files that is related to the issue identified in the COMAD and/or RIDF. To request documentation, contact the Schools and Libraries staff at SLCompliance@usac.org.

NOTE: Effective November 20, 2014, all applicants and service providers are required to retain receipt and delivery records relating to pre-bidding, bidding, contracts, applications process, invoices, provision of services, and other matters relating to the administration of the universal service for a period of at least ten years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request.

When do I appeal to USAC and when do I appeal to the FCC?

Any USAC decision must be appealed to USAC first. You have 60 days from the date USAC issued its decision to submit an appeal to USAC. If you disagree with USAC's decision on appeal, you can appeal USAC's decision to the FCC. You must submit your appeal to the FCC within 60 days of the date when USAC issued the decision. USAC issues decisions through multiple letters including the COMAD letter you received with this FAQ document.

USAC cannot waive program rules. Any requests to waive program rules must be filed as a waiver request to the FCC. For example, instances where you may be requesting a waiver of program rules includes a waiver request of late payment fees, a form filing deadline that you missed, or collection rules.

What if I want to file an appeal with USAC or an appeal or a waiver request with the FCC and USAC does not provide documentation to me in time?

Please refer to your COMAD and/or RIDF Letter for instructions on filing an appeal with USAC. If you need to request documentation, we strongly urge you to make your request promptly. Staff will make every effort to respond to your documentation request within 15 days. If the recovery was the result of an Audit the Audit Report is provided with the COMAD and/or RIDF letter. Please remember that you have 60 days from the date of your COMAD/RIDF letter to file your appeal with USAC.

Is there a payment plan option if I do not have enough money to repay the debt right now?

Yes, there is a payment plan option. However, payment plan agreements usually impose additional requirements on the debtor, such as interest on the balance owed, administrative fees, and possible audit obligations.

Payment plan requests can be submitted to:

Universal Service Administrative Co.
Finance Department
700 12th Street, NW
Suite 900
Washington, DC 20005
Fax: (202) 776-0080

Program participants that wish to request an installment payment agreement must first provide evidence to demonstrate their inability to pay the debt in one payment, and USAC must review and approve the evidence. If your request is approved for further processing, you will be required to execute a written agreement deemed suitable by the FCC. This includes a written installment payment agreement (including a promissory note) to pay the full amount of the debt.

What is a COMAD?

A Commitment Adjustment (COMAD) rescinds or reduces funding on a commitment that was made improperly. The COMAD process is how USAC notifies a program participant that its commitment has been adjusted, and the COMAD letter sent to the program participant provides the rationale for the decision.

For example: A discount reported on an FCC Form 471 was too high, and the commitment calculation was therefore incorrect. USAC must adjust the commitment amount downward to reflect the correct discount rate. Say the pre-discount cost of the service was \$1,000.00 and the discount reported on the FCC Form 471 was 80%. However, when USAC discovered after commitment that the discount should have been 60%, USAC would modify the discount and reduce the commitment from \$800.00 to \$600.00.

What is a RIDF?

A Recovery of Improperly Disbursed Funds (RIDF) occurs when USAC has determined that funds have been improperly disbursed and must be recovered.

For example: USAC improperly paid an invoice for ineligible products/services, so the funds that were disbursed in error must be recovered. In this example, if it was determined that \$1,000 was improperly disbursed, USAC would recover the \$1,000 through a RIDF action.

What is the difference between a COMAD and RIDF?

A COMAD occurs when USAC determines the original commitment was improper. There may or may not be a recovery of disbursed funds associated with a COMAD. A RIDF occurs when USAC determines funds were improperly disbursed. There is always a recovery associated with a RIDF.

ATTACHMENT D

Rosemary Enos

From: Rosemary Enos <rpenos@epicinc.org>
Sent: Monday, November 12, 2018 12:20 PM
To: 'SLCompliance@usac.org'
Cc: currieasutton@epicinc.org
Subject: GLENDALE SCHOOL DISTRICT.11-06-2018 - REQUEST FOR DOCUMENTATION
Attachments: CAL for FRN 1614763.pdf

Importance: High

From the frequently asked questions document:

What do I do if I no longer have documentation?

If you no longer have documentation in support of the funding request, please contact USAC. We will provide copies of documentation that was submitted by the applicant or service provider from our files that is related to the issue identified in the COMAD and/or RIDF.

This is a request for documentation submitted by the applicant or service provider from USAC files related to the issue identified and in support of FRN: 1614763 – please see the attached CAL letter for more information.

Thanks,
Rosemary

Rosemary Enos
Epic Communications
P.O. Box 39490
Solon, OH 44139
866-716-3336 (toll free)
866-604-8456 (toll free fax)
216-514-3336 (phone)
216-514-3337 (fax)
216-218-9193 (cell)
rpenos@epicinc.org

ATTACHMENT E

Rosemary Enos

From: Steven Mitchell <Steven.Mitchell@usac.org>
Sent: Monday, December 03, 2018 3:48 PM
To: Rosemary Enos
Cc: currieasutton@epicinc.org
Subject: Recovery of Improperly Disbursed Funds (Glendale School District)
Attachments: GLENDALE SCHOOL DISTRICT.11-06-2018 - REQUEST FOR DOCUMENTATION (270 KB)

Hello Rosemary:

My apologies but it's taking us a bit longer to locate the documents related to the Recovery of Improperly Disbursed Funds letter you recently received (attached). To that end, I would recommend you file an appeal with USAC challenging the recovery. During that time we should be able to provide you with the documents requested. Here is a link that provides info on how to file an appeal: <https://www.usac.org/about/about/program-integrity/appeals.aspx>.

Thanks very much and please let me know if you have any questions.

Sincerely,

Steven Mitchell

Senior Program Analyst | Schools and Libraries Program
USAC
(202) 776-0200 (ph)
smitchell@usac.org | www.usac.org

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ATTACHMENT F



First Demand Payment Letter

Edward DiSabato
GLENDALE SCHOOL DISTRICT
1466 BEAVER VALLEY RD
FLINTON, PA 16640 - 8900

01/17/2019

DEMAND FOR PAYMENT OF DEBT OWED TO THE UNITED STATES

This letter is to notify you that the Universal Service Administrative Company ("USAC"), acting on behalf of the Federal Communications Commission (FCC or Commission), has determined that GLENDALE SCHOOL DISTRICT received improper payments of \$9,768.15 from the Universal Service Fund. On November 06, 2018, USAC sent GLENDALE SCHOOL DISTRICT a Commitment Adjustment Letter informing GLENDALE SCHOOL DISTRICT of the decision to recover funds for the Funding Request Number(s) (FRNs) listed on the Adjustment Report included in this demand letter. A summary of the relevant FRNs with the corresponding recovery amounts and explanations for the recovery sought is as follows:

Total Due **\$9,768.15**

Due Date **2/16/2019**

Note: Your due date is adjusted to the next business day when the due date is on a weekend or Federal holiday

| <i>FCC Form 471</i> | <i>FRN</i> | <i>Commitment adjustment</i> | <i>Total amount to be recovered</i> | <i>Explanation(s)</i> | <i>Party to recover from</i> |
|---------------------|------------|------------------------------|-------------------------------------|-------------------------|------------------------------|
| 582788 | 1614763 | \$9,768.15 | \$9,768.15 | Comp. Bidding Violation | Applicant |

See Attached Adjustment Report for more information on the specific FRNs and Explanations listed above.



The FCC has determined that the \$9,768.15 overpayment is a debt owed to the United States (the "Debt") and has instructed USAC to collect payment of the Debt pursuant to the Debt Collection Improvement Act, 31 U.S.C. §3701, et seq. ("DCIA"). Accordingly, USAC hereby demands that GLENDALE SCHOOL DISTRICT immediately pay the Debt, which is due and owing without further demand within thirty (30) days of the date of this letter (the "Due Date"). Payment instructions are provided below.

If GLENDALE SCHOOL DISTRICT does not pay the Debt in full on or by the Due Date, the Debt will be delinquent on that date and thereafter, may accrue interest, administrative costs and penalties, in accordance with the DCIA. For further information on the DCIA, and the Treasury and FCC debt collection regulations implementing the DCIA, please see 31 U.S.C. § 3701, et seq., 31 C.F.R. § 900, et seq. and 47 C.F.R. § 1.1901, et seq.

Pursuant to the FCC's Red Light Rule, unless an administrative appeal of the Commitment Adjustment Letter is pending, neither the FCC nor USAC will act on any GLENDALE SCHOOL DISTRICT funding application(s) or any payment request(s), until the Debt and all charges which may have accrued are paid in full or resolved. In addition, if all or a portion of the Debt and any accrued charges remain after the Due Date, unless an appeal is pending or other satisfactory arrangements have been made, all GLENDALE SCHOOL DISTRICT applications and requests for benefits will be dismissed. For more information on the FCC's Red Light Rule, please see <https://www.fcc.gov/encyclopedia/red-light-frequently-asked-questions>. In determining whether an entity is delinquent for purposes of the FCC's Red Light Rule, the FCC and USAC match the FCC Registration Number of the Debtor to the FCC's database of debts; the Debtor's FCC Registration Number will be linked to all other FCC Registration Numbers associated with the same Taxpayer Identification Number (TIN).

In addition, if GLENDALE SCHOOL DISTRICT does not pay the Debt and all accrued charges in full by the Due Date, the FCC may instruct USAC to offset or recoup the Debt and any accrued charges against any monies, including Universal Service Fund disbursements, USAC or the FCC may owe GLENDALE SCHOOL DISTRICT.

Further, unless an appeal is pending or other satisfactory arrangements have been made, no later than 90 days from the date of this demand letter, USAC will refer the delinquent Debt and any accrued charges to the United States Treasury for further collection action, in which event the United States Treasury will impose an additional surcharge (currently 28% of the Debt). The United States Treasury may offset the Debt and any accrued charges against monies owed to you by the United States. In addition, the United State Treasury may report GLENDALE SCHOOL DISTRICT's delinquency to credit bureaus and GLENDALE SCHOOL DISTRICT may be denied federal financial assistance.

GLENDALE SCHOOL DISTRICT has 15 days from the date of this letter to request a review of the records supporting this Debt. GLENDALE SCHOOL DISTRICT may also request a written agreement to repay the Debt, but only if it makes



the request within 15 days of the date of this letter. An explanation of the process by which GLENDALE SCHOOL DISTRICT may request a repayment agreement can be found at <http://usac.org/cont/making-payments/payment-plans.aspx>. All payment plan requests are subject to FCC approval.

You previously received information regarding your appeal rights in the Commitment Adjustment Letter.

Payment of the Debt should be made at www.usac.org/pay.

If you have questions, or believe that you received this notification in error, please contact us or call the USAC Client Service Bureau at (888) 203-8100 for further assistance.



Adjustment Report

FCC Form 471 Application Number: 582788
Funding Request Number: 1614763
Commitment Adjustment: \$9,768.15
Total Amount to Be Recovered: \$9,768.15
Explanation(s): Comp. Bidding Violation

Party to Recover From: Applicant
Funding Year: 2007
Billed Entity Number: 125595
Services Ordered: TELCOMM SERVICES
Service Provider Name: Windstream Communications, LLC
SPIN: 143030766
Original Funding Commitment: \$9,768.15
Adjusted Funding Commitment: \$0.00
Funds Disbursed to Date: \$9,768.15

Funding Commitment Adjustment Explanation

Based on the documentation provided during a review, it was determined that this funding commitment must be rescinded in full. Funds were erroneously committed because USAC determined that the District did not comply with the Pennsylvania Public School Code; Section 508, requiring school board approval for all contracts in the amount of \$100 and above. The District did not get board approval prior to signing a contract with the service provider for the requested amount. As an applicant of the E-rate program, you must be in compliance with all program rules as well as all applicable state and local procurement rules and regulations. As a result this funding commitment is rescinded in full because you failed to comply with the state procurement code requirement. USAC will seek recovery of any improperly disbursed funds from the applicant.

ATTACHMENT G

[Records](#) / [Customer Service Cases](#)

#263546 - Y10PA Glendale SD - First Demand Payment Letter Information Request

[Summary](#) [News](#) [Related Actions](#)

Case Details

| | | | |
|--------------|---------------------------------|--------------|--------------------------|
| Topic | Post Commitment Changes - COMAD | Form Type | FCC Form 471 |
| Status | Closed | Form Number | 582788 |
| Priority | High | Created By | ROSEMARY ENOS |
| Inquiry Type | Web | Created On | 1/30/2019 5:22 PM EST |
| | | Organization | GLENDALE SCHOOL DISTRICT |

Case Description

Description Glendale School District received the attached "First Demand Letter" dated January 10, 2019. In that letter is the following statement on page 2: GLENDALE SCHOOL DISTRICT has 15 days from the date of this letter to request a review of the records supporting this Debt."

This is a request on behalf of Glendale School District for a review of the records supporting the Debt referenced in the letter.

Case Artifacts

Documents

| Name | Uploaded By | Upload Date |
|--|---------------|-----------------|
| Glendale USAC Letter 1-30-19 | ROSEMARY ENOS | 1/30/19 5:22 PM |

Attachments

| Attachment | Attachment Type |
|--------------------|-----------------|
| No items available | |

Case Thread

| User | Note | Date |
|------|------|------|
| | | |

| User | Note | Date |
|------|---|-----------------------|
| USAC | <p>At times, USAC may conduct post-commitment funding reviews which may include Program Integrity Assurance (PIA) reviews, audits, invoice reviews, appeal reviews, and other investigations (such as whistleblower alerts). As a result of these reviews, USAC may discover that certain funds were committed in error. The FCC requires USAC to rescind such commitments and recover funding that may have been improperly disbursed. USAC refers to this process as the "Commitment Adjustment" or "COMAD" process.</p> <p>If a COMAD is necessary, USAC will provide both the applicant and the service provider with a Commitment Adjustment Letter containing a funding commitment report which lists the Funding Request Number(s) (FRNs), FCC Form 471 Application Number, Billed Entity Number (BEN), and Service Provider Identification Number (SPIN) affected by the COMAD. Decisions on COMADs can be appealed and appeal information is included in the letter.</p> <p>If the amount of funds disbursed to date exceeds the adjusted funding commitment amount, FCC rules require USAC to recover the funds disbursed in error. In these cases, USAC will send a letter to the responsible party (service provider, applicant, or both) describing the process for recovering those funds. USAC will send a copy of the letter to the party who is not responsible, when applicable. This letter will include an explanation of the options available for USAC to recover the funds disbursed in error. Future communications from USAC concerning the COMAD are tailored to the response(s) received.</p> <p>If the amount of funds disbursed to date is less than the adjusted funding commitment amount, USAC will continue to process valid invoices up to the adjusted funding commitment amount. In general, if funds need to be recovered, USAC will seek recovery from the responsible party.</p> <p>When USAC discovers that funds were disbursed in error but the decision to commit the funds was correct, such as invoicing USAC for ineligible products/services, USAC will seek recovery of the improperly disbursed funds (RIDF). The commitment may not be adjusted when a RIDF is determined. Once the improperly disbursed funds are returned to USAC, USAC will pay valid invoices submitted for that FRN.</p> <p>For more information, refer to the Commitment Adjustments page on the Schools and Libraries website: http://usac.org/sl/applicants/before-youre-done/commitment-adjustments.aspx</p> | 3/20/2019 2:20 PM EDT |

| User | Note | Date |
|---------------|---|------------------------|
| ROSEMARY ENOS | <p>Good Afternoon,</p> <p>After reviewing this Customer Service Case, I realized that I did send an inquiry before the 15-day deadline had passed. In the response below it states: "According to the First Demand Payment Letter dated 01/17/2019, Glendale School District had 15 calendar days from the date of the letter to request a review of the records supporting this debt. That date would've been 02/01/2019 which has passed."</p> <p>The date that I requested the review was 1/30/2019 which is within the 15 calendar days to request the information.</p> <p>This is a request on behalf of Glendale School District for a review of the records supporting the Debt referenced in the demand letter.</p> <p>Thanks, Rosemary</p> | 2/23/2019 3:21 PM EST |
| USAC | <p>Good Morning,</p> <p>We greatly appreciate your patience while we work through this backlog. This case will now close since a status has been identified.</p> <p>Thank you.</p> | 2/14/2019 11:34 AM EST |
| USAC | <p>Good Morning,</p> <p>According to the First Demand Payment Letter dated 01/17/2019, Glendale School District had 15 calendar days from the date of the letter to request a review of the records supporting this debt. That date would've been 02/01/2019 which has passed.</p> <p>Thank you.</p> | 2/4/2019 11:04 AM EST |
| USAC | <p>Tia,</p> <p>Applicant's question:</p> <p>While Glendale School District is waiting on an Administrator's decision of their appeal, can a a review of the records supporting the Debt referenced in the first demand letter be obtained?</p> | 2/4/2019 9:49 AM EST |
| USAC | <p>Thank you for contacting USAC Client Service Bureau regarding Demand Payment Letter. We have escalated your case to USAC customer service management for a response. If you have additional questions, please contact us at (888)-203-8100.</p> <p>Thank you, Jasmine A. Universal Service Administrative Company (USAC) Client Service Bureau (888) 203-8100</p> | 2/4/2019 9:48 AM EST |
| ROSEMARY ENOS | <p>While Glendale School District is waiting on an Administrator's decision of their appeal, can a a review of the records supporting the Debt referenced in the first demand letter be obtained?</p> | 2/1/2019 10:17 AM EST |

| User | Note | Date |
|---------|---|----------------------|
| USAC | <p>Good morning, Ms. Enos.</p> <p>If an appeal is submitted to USAC within 60 days of the COMAD or RIDF letter, USAC will stop the collection process pending the result of the appeal. Occasionally, due to a timing issue, a 1st DPL may be issued even when an appeal is submitted within 60 days. As long as the Applicant or Service Provider is sure the appeal was submitted within 60 days, they may disregard the 1st DPL pending the result of the appeal. A 2nd DPL will not be issued 30 days after the 1st DPL if the timely-submitted appeal is still in review.</p> <p>If a timely-submitted appeal is denied but a 1st DPL was issued due to a timing issue, USAC will issue a new 1st DPL shortly after the Appeals Administrator's Decision Letter is issued. In this case, there will be a new 30 day period beginning with the date of this new 1st DPL.</p> <p>If an appeal is denied by USAC, the Applicant or Service Provider still has the standard 60 day window to appeal to the FCC. However, all COMAD, RIDF, and Red Light Rule actions will continue within USAC approved time frames until such time we are notified by the FCC that an appeal was submitted to them.</p> <p>If the USAC appeal is out of window (i.e. it is postmarked after the 60 day appeal deadline) USAC will continue collection activity and send the 2nd DPL 30 days after the 1st DPL - but only after USAC Appeals has issued the Out of Window letter for the appeal.</p> <p>If you have any questions or believe this case was closed incorrectly, please re-open this case or contact us at (888)203-8100.</p> <p>Thank you, Danielle Universal Service Administrative Company (USAC) Client Service Bureau</p> | 2/1/2019 9:48 AM EST |
| 8 items | | |

Case Contact

Case Contact ROSEMARY ENOS

